



OFFICE OF
THE ATTORNEY GENERAL
AUSTIN, TEXAS

NICE DANIEL
ATTORNEY GENERAL

February 7, 1947

Hon. Robert Gooding
County Attorney
Red River County
Clarksville, Texas

Opinion No. V-38

Re: Whether or not it is
legal for the Commis-
sioners' Court of Red
River County to appoint
a stenographer clerk for
the County Attorney who
is not a licensed lawyer

Dear Sir:

We are in receipt of your letter dated January 9, 1947, in which you requested an opinion of this Department on the above captioned matter. We quote the first paragraph of your letter which is as follows:

"As County Attorney of Red River County, Texas, having a population of 29,769 by the Federal Census of 1940 thus throwing the County into brackets of 25,001 and to 37,500, I desire to know whether or not the appointment and confirmation by the Commissioners' Court of a stenographer clerk for the County Attorney, who is not a licensed lawyer, is legal."

We find no statutory or constitutional provision for the Commissioners' Court of any county of this State to appoint a stenographer clerk. Therefore, it is the opinion of this Department that there can be no such appointment.

We fail to find any provision in the Constitution or the statutes for the appointment of a stenographer for the County Attorney save and except that set out in Article 331a, Revised Statutes, which is as follows:

"Sec. 1. That in any county having a population of more than 100,000 and less than 150,000, and containing a city of more than 75,000 population, according to the United States Census for the year 1920, the County Attorney is hereby authorized to ap-

point two Assistant County Attorneys, each having the qualifications required of County Attorneys, one of whom shall receive a salary of \$3000.00 per annum, and one of whom shall receive a salary of \$2400.00 per annum. The said County Attorney is also hereby authorized to appoint one stenographer at a salary not to exceed \$1800.00 per annum. The salaries of the Assistants and stenographer above provided for shall be paid monthly by the county in which such appointments are made.

" *** "

Red River County does not come within that particular population bracket as above set out. Therefore, it is the opinion of this Department that there can be no appointment of a stenographer for the County Attorney of said County.

Article 3902 reads in part as follows:

"Whenever any district, county or precinct officer shall require the services of deputies, assistants or clerks in the performance of his duties he shall apply to the County Commissioners' Court of his county for authority to appoint such deputies, assistants or clerks, stating by sworn application the number needed, the position to be filled and the amount to be paid. Said application shall be accompanied by a statement showing the probable receipts from fees, commissions and compensation to be collected by said office during the fiscal year and the probable disbursements which shall include all salaries and expenses of said office; and said court shall make its order authorizing the appointment of such deputies, assistants and clerks and fix the compensation to be paid them within the limitations herein prescribed and determine the number to be appointed as in the discretion of said court may be proper; provided that in no case shall the Commissioners' Court or any member thereof attempt to influence the appointment of any person as deputy, assistant or clerk in any office. Upon the entry of such order the officers applying for such assistants, deputies or clerks shall be

authorized to appoint them; provided that said compensation shall not exceed the maximum amount hereinafter set out. * * *

In our opinion No. 0-1874, this Department held that the County Attorney of Liberty County, Texas, upon compliance with the provisions as set out in Article 3902, a clerk might be appointed for such County Attorney and that it was within the discretion of the Commissioners' Court to determine whether or not the duties to be performed by the person employed constitute the duty of a clerk. The statutes do not prescribe the qualifications of a clerk for county officers. A person having the qualifications of a stenographer is not for that reason disqualified from holding the position of clerk in the office of the County Attorney or any other county office. Therefore, there is no legal objection to the County Attorney appointing such a person to the position of clerk in his office.

We know of no statutory or constitutional provision for the clerk of a county attorney to be a licensed lawyer. The duties imposed upon the clerk are wholly different from those imposed upon an Assistant County Attorney. Therefore, it is the opinion of this Department that a clerk of a county attorney is not required to be a licensed lawyer under the laws of this State.

Sections 2 and 9 of Article 3902, V.A.C.S., are applicable to Red River County and govern the amount of compensation which may be paid to said clerk of the County Attorney.

SUMMARY

There is no statutory or constitutional provision specifically authorizing any county officer to appoint a "stenographer clerk." Likewise, there is no authority for the County Attorney of Red River County to appoint a stenographer as such. He has the authority to appoint, with the consent of the Commissioners' Court of his county, a clerk who may have the qualifications

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of a stenographer. (Art. 3902, V.A.C.S.; Opinion No. 0-1874). Such a clerk is not required to be a licensed lawyer.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By



Bruce Allen
Assistant

APPROVED FEB. 7, 1947



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Approved Opinion Committee
By BWB, Chairman